
(2015) 07 PAT CK 0127

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6050 of 2015

Sanjeev Kumar Thakur

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Army Act, 1950 — Section 2(1)
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2(s), 2(s)(i)
Territorial Army Act, 1948 — Section 9

Citation : (2015) 147 FLR 145

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Amar Nath Jha, for the Appellant; Lalan Kumar Lalit, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar, J—Heard Sri Amar Nath Jha, learned Counsel for the petitioner and Sri Lalan Kumar Lalit, learned AC to GP No. 23. The petitioner, who claims to be the General Secretary of Bihar Regimental Centre Employees Union, Danapur Cantonment, Patna, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for quashing of a communication made by Labour Commissioner-cum-Registrar, Trade Union, Bihar, Patna to Deputy Labour Commissioner, Patna Division, Patna, whereby an intimation has been given regarding rejection of application of Bihar Regimental Centre Employees Union, Danapur Cantt., Patna, in respect of its registration under the Trade Union Act.

2. Learned Counsel for the petitioner submits that petitioner Union is not a member of Armed Forces rather the members of this Union are of clerical and civil cadre, Steno, Draftsman, Carpenter, Barber, Washer Man etc. According to learned Counsel for the petitioner the petitioner's Union is entitled to be registered under the provisions of the Trade Union Act, 1926 and accordingly, a prayer has been made to quash Annexure - "1" to the writ petition.

3. In this case a counter affidavit has been filed on behalf of respondent/State duly sworn by the Deputy Registrar, Trade Union, Labour Resources Department, Patna. In the counter affidavit a plea has been taken that in view of provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "I.D. Act") the petitioner/Union is not entitled to be registered as Trade Union under the Trade Union Act. Learned Counsel for the State submits that members of the petitioner's union may not be considered as workmen under the I.D. Act and as such, their Union may not be registered under the Trade Union Act, 1926. He submits that the Army Personnel have been excluded from the definition of "workmen" as Exception to section 2(s) of the I.D. Act. He further submits that issue raised in the present writ petition has already been set at rest by the Apex Court in a case of Gopal Upadhyaya and Others Vs. Union of India (UOI) and Others, AIR 1987 SC 413 : (1987) LabIC 236 : (1995) 3 LLJ 465 : (1986) 2 SCALE 998 : (1986) 1 SCC 501 Supp : (1986) SCC 501 Supp : (1986) 2 SLJ 998 : (1987) 1 UJ 51 .

4. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. Before going into the details, it would be appropriate to mention that the under section 2(s)(i) of the I.D. Act, persons who are subject matter to the Air Force Act, Army Act or Navy Act, have been excluded to be considered as "workmen". At this juncture it would be appropriate to refer to section 2(1) of the Army Act, 1950 which suggests that even person holding civil post associated with the regular Army are covered under the Army Act. It would be appropriate to quote section 2(1) of the Army Act as follows:

"2(1) The following persons shall be subject to this Act wherever they may be, namely:--

- (a) officers, junior commissioned officers and warrant officers of the regular Army;
- (b) persons enrolled under this Act;
- (c) persons belong to the Indian Reserve Forces;
- (d) persons belonging to the Indian supplementary Reserve Forces when called out for service or when carrying out the annual test;
- (e) officers of the Territorial Army, when doing duty as such officers, and enrolled persons of the said Army when called out or embodied or attached to any regular forces, subject to such adaptations and modifications as may be made in the application of this Act to such persons under sub-section (1) of section 9 of the Territorial Army Act, 1948 (56 of 1948);
- (f) Persons holding commissions in the Army in Indian Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces;
- (g) Officers appointed to the Indian Regular Reserve of Officers, when ordered on

any duty or service for which they are liable as members of such reserve forces;

(i) persons not otherwise subject to military law who, on active service, in camp, on the march or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, the regular Army."

5. On examination of aforesaid provision of the Army Act there is no doubt in the mind of the Court that even person holding civil post, such as member of petitioner Union i.e., Clerk, Steno, Carpenter, Washerman etc. who are associated with the regular Army are covered by the Army Act.

6. Now the question is as to whether Army personnel which include personnel holding Civil posts are entitled to form a Union? This question can be answered only by way of referring to Rule 19(ii) of the Army Rules which categorically put a bar on person subject to the Army Rules to be a member of any Trade Union or Labour Union. Rule 19 of the Army Rules is quoted hereinbelow :

"19. Unauthorised organization.--No person subject to the Act shall, without the express sanction of the Central Government,-

(i) take official cognizance of, or assist or take any active part in any society, institution or organization, not recognized as part of the Armed Forces of the Union; unless it be of a recreational or religious nature in which case prior sanction of the superior officer shall be obtained;

(ii) be a member of, or be associated in any way with, any trade union or labour union, or any class of trade or labour unions."

7. Moreover the issue which has been raised in the present case was extensively examined by the Apex Court in a case Ous Kutilingal Achudan Nair and Others Vs. Union of India (UOI) and Others, AIR 1976 SC 1179 : (1976) LabIC 780 : (1976) 2 SCC 780 : (1976) 2 SCR 769 : (1976) 8 UJ 43 , and same has been set at rest. In view of the facts and circumstances particularly law laid down by the Apex Court, there is no reason to interfere with the impugned order.

The writ petition stands dismissed.